

**SUPREME COURT OF CALIFORNIA  
ORAL ARGUMENT CALENDAR  
LOS ANGELES SESSION  
OCTOBER 5 and 6, 2004**

The following cases are placed upon the calendar of the Supreme Court for oral argument at its courtroom in the Ronald Reagan State Office Building, 300 South Spring Street, 3rd Floor, North Tower, Los Angeles, California, on October 5 and 6, 2004.

**TUESDAY, OCTOBER 5, 2004—9:00 A.M.**

- (1) S115008 Gates v. Discovery Communications
- (2) S113799 Elsner v. Uveges
- (3) S114054 Robinson Helicopter Company v. Dana Corporation

**2:00 P.M.**

- (4) S114375 People v. Braxton
- (5) S033975 People v. Michael Steven Combs [**Automatic Appeal**]
- (6) S034473 People v. Christian Antonio Monterroso [**Automatic Appeal**]

**WEDNESDAY, OCTOBER 6, 2004—9:00 A.M.**

- (7) S119897 Coalition of Concerned Communities v. City of Los Angeles
- (8) S118450 City of Long Beach v. Department of Industrial Relations
- (9) S112624 Lewis Jorge Construction v. Pomona Unified School District

**1:30 P.M.**

- (10) S023835 People v. Jesse Morrison [**Automatic Appeal**]
- (11) S044677 People v. Danny Ray Horning [**Automatic Appeal**]

\_\_\_\_\_  
GEORGE  
Chief Justice

If exhibits are to be transmitted to this court, counsel must comply with Rule 18(c), California Rules of Court.

**SUPREME COURT OF CALIFORNIA  
ORAL ARGUMENT CALENDAR  
LOS ANGELES SESSION  
OCTOBER 5 and 6, 2004**

The following case summaries are issued to inform the public and the press of cases that the Supreme Court has scheduled for oral argument and of their general subject matter. Generally, the descriptions set out below are reproduced from the original news release issued when review in each of these matters was granted and are provided for the convenience of the public and the press. The descriptions do not necessarily reflect the view of the court or define the specific issues that will be addressed by the court.

**TUESDAY, OCTOBER 5, 2004—9:00 A.M.**

***(1) Gates v. Discovery Communications, S115008***

#03-83 Gates v. Discovery Communications, S115008. (D039399; 106 Cal.App.4th 677; Superior Court of San Diego County; GIC769395.) Petition for review after the Court of Appeal reversed an order in a civil action. This case presents the following issue: Is *Briscoe v. Reader's Digest Association, Inc.* (1971) 4 Cal.3d 529, which held that a plaintiff could maintain a tort action for invasion of privacy under California law based upon a defendant's publication of a truthful story identifying the plaintiff, a rehabilitated and otherwise anonymous private individual, as having committed a crime many years in the past, no longer viable in light of more recent decisions of the United States Supreme Court analyzing the First Amendment protection afforded the truthful publication of facts in the public record?

***(2) Elsner v. Uveges, S113799***

#03-62 Elsner v. Uveges, S113799. (D037761; 106 Cal.App.4th 73; Superior Court of San Diego County; 739513.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case includes the following issue: Are regulations promulgated under the California Occupational Safety and

Health Act admissible to prove the standard of care and/or establish a presumption of negligence in a personal injury action by an employee against a party other than his or her own employee? (See Lab. Code, § 6304.5.)

***(3) Robinson Helicopter Company v. Dana Corporation, S114054***

#03-67 Robinson Helicopter Company v. Dana Corporation, S114054.

(B150963; 105 Cal.App.4th 749; Superior Court of Los Angeles County; YC036795.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. This case presents the following issue: Does the economic loss rule, which in some circumstances bars a tort action in the absence of personal injury or physical property damage, apply to claims for intentional misrepresentation or fraud in the performance of a contract?

**2:00 P.M.**

***(4) People v. Braxton, S114375***

#03-53 People v. Braxton, S114375. (A096083; 106 Cal.App.4th 137; Superior Court of Solano County; FCR178124.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses. This case presents the following issues: (1) Was defendant entitled to a new trial under Penal Code section 1202 where the trial court refused to consider defense counsel's oral new trial motion at sentencing? (2) In general, when a trial court initially refuses to consider a new trial motion, must a defendant specifically bring the provisions of section 1202 to the trial court's attention in order to obtain the remedy provided by that section? (3) Should the Court of Appeal have remanded for a hearing on defendant's new trial motion rather than reversing the judgment and granting a new trial?

***(5) People v. Michael Steven Combs, S033975 [Automatic Appeal]***

This matter is an automatic appeal from a judgment of death.

***(6) People v. Christian Antonio Monterroso, S034473 [Automatic Appeal]***

This matter is an automatic appeal from a judgment of death.

**WEDNESDAY, OCTOBER 6, 2004—9:00 A.M.**

***(7) Coalition of Concerned Communities v. City of Los Angeles, S119897***

#03-152 Coalition of Concerned Communities v. City of Los Angeles, S119897. (B149092; 111 Cal.App.4th 1166; Superior Court of Los Angeles County; BC207782.) Petition for review after the Court of Appeal affirmed the judgment in an action for writ of administrative mandate. The court limited review to the following issue: Does the term “housing development”—for purposes of the Mello Act requirement that a developer provide affordable housing, where feasible, when a new housing development is constructed within the coastal zone subject to the jurisdiction of the California Coastal Commission (Gov. Code, § 65590)—refer only to the actual housing component of a project, or is the Mello Act applicable if some aspects of the project are in the coastal zone even if all actual housing is to be constructed outside the coastal zone?

***(8) City of Long Beach v. Department of Industrial Relations, S118450***

#03-127 City of Long Beach v. Department of Industrial Relations, S118450. (B159333; 110 Cal.App.4th 636; Superior Court of Los Angeles County; BS072516.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case includes the following issue: Does the prevailing wage law (Lab. Code, §§ 1720–1861), which requires a contractor who performs work on any “public work” within the state to pay prevailing wages to its employees, involve “a matter of statewide concern,” so that the statute is applicable to a public works project in a charter city even if the construction of the project would otherwise involve a “municipal affair”? (See *City of Pasadena v. Charleville* (1932) 215 Cal. 384.)

***(9) Lewis Jorge Construction v. Pomona Unified School District, S112624***

#03-27 Lewis Jorge Construction v. Pomona Unified School District, S112624.

(B143162; unpublished opinion; Superior Court of Los Angeles County;

KC023186.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. This case includes the following issues: (1) Are lost profits allegedly attributable to impaired bonding capacity caused by a pending contract dispute recoverable as general damages in an action for breach of that contract? (2) If so, is evidence of past profitability sufficient to support an award of such damages or is more specific proof required that plaintiff would have succeeded in securing specific projects with reasonable bids that would have generated a profit?

**1:30 P.M.**

***(10) People v. Jesse Morrison, S023835 [Automatic Appeal]***

This matter is an automatic appeal from a judgment of death.

***(11) People v. Danny Ray Horning, S044677 [Automatic Appeal]***

This matter is an automatic appeal from a judgment of death.